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Conclusions of the second Consultation Meeting on the implications for States members of the Council of Europe of the ratification of the Rome Statute of the International Criminal Court, Strasbourg, France, 13 and 14 September 2001

and

Declaration on the International Criminal Court, adopted by the Committee of Ministers of the Council of Europe on 10 October 2001

Information document submitted by Liechtenstein

I. Second Consultation Meeting on the International Criminal Court, Strasbourg, France, 13-14 September 2001

1. Following a first Consultation Meeting in May 2000, which had been the joint initiative of the European Committee on Crime Problems (CDPC) and the Committee of Legal Advisers on Public International Law (CAHDI), the Council of Europe, at the initiative of the Principality of Liechtenstein, which holds the chairmanship of the Committee of Ministers, organized a Second Consultation Meeting on the implications for Council of Europe member States of the ratification of the Rome Statute of the International Criminal Court (ICC) in Strasbourg, France, on 13 and 14 September 2001.

2. The meeting was held in the framework of the intergovernmental programme of activities of the Council of Europe, with a view to facilitating an exchange of views and information among the member States and observer States of the Council of Europe and considering the significant role that the Council of Europe can play in this respect.

3. Experts from 39 member States, the European Commission, 6 observer States and observers from Interpol and the International Committee of the Red Cross took part in the meeting, which was opened by the Deputy Secretary-General of the

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Council of Europe, Hans-Christian Krüger, the Chairman of the Ministers' Deputies, Ambassador Josef Wolf of Liechtenstein, and the Minister of Justice of Belgium, Marc Verwilghen. Ambassador Árpád Prandler of Hungary chaired the Consultation Meeting.

4. Participants first heard an intervention from Lucius Caflisch, Judge of the European Court of Human Rights, who addressed selected issues of the ICC Statute from the point of view of the European Convention on Human Rights. The meeting then turned to the presentation of several national reports on the status and process of ratification and implementation of the ICC Statute. Written national reports from a large number of countries formed the basis for preparation for the meeting and were made available to the participants via a web site.

5. The specific topics addressed in the detailed discussions of the meeting included the topics of national and international immunities and the implementation of the ICC Statute, the surrender of persons to the future ICC and other issues of cooperation with the ICC, such as the transit of persons over the territory of a State, the enforcement of sentences, as well as the reform of national substantive criminal law.

Conclusions

6. Participants thanked the Principality of Liechtenstein for its important initiative to convene the second round of consultations.

7. Participants welcomed the significant and encouraging developments in the field of the ratification and implementation process since the holding of the first Consultation Meeting in May 2000.

8. Participants noted that since the first Consultation Meeting the number of States members of the Council of Europe which had ratified the Rome Statute had grown from 3 to 16 and learned in the course of the debates that a number of other member States were in a position to ratify soon. Participants recognized that this task required thorough consideration by the competent national authorities and that exchanges of information and views among member States, observer States and the organizations mentioned above might benefit this process.

9. In that connection participants welcomed the setting up of the web site as well as the network of country coordinators which were both established in response to the conclusions of the first Consultation Meeting, in which participants had called upon the Council of Europe to facilitate cooperation on the ICC among its member States and observers. This cooperation should also include activities on a subregional level.

10. In the context of States' obligations with respect to the European Convention for the Protection of Human Rights and Fundamental Freedoms, participants considered that deferral of jurisdiction to the ICC might not entirely free a State in a given case from its obligations arising from the Convention. The provisions of the Convention should therefore be borne in mind when undertaking the process of ratification and implementation of the ICC Statute.

11. Participants noted that, in order to ensure compliance with the obligations derived from the Rome Statute, various approaches were possible for the

implementation of the Statute, taking into account different legal systems and traditions.

12. On the subject of immunities, the participants noted the report of the Venice Commission on constitutional issues of ratification of the Rome Statute, which had been prepared on the basis of reports provided to the first Consultation Meeting. Participants considered that, as regards immunities provided for by national and international law, solutions must be found in order to secure full compliance with the ICC Statute. Constitutional amendments, where necessary, afforded one solution to this end, but other legislative or interpretative means might also be appropriate.

13. Participants further discussed the subject of putting in place the necessary procedures for effective and swift cooperation with the ICC, in particular, the issue of compliance with requests from the ICC for the surrender of persons, and noted the growing acceptance of a distinction between this type of transfer procedure and traditional extradition procedures. Various issues were discussed with regard to situations in which a person, in the course of the compliance with a cooperation request from the ICC (article 89, para. 3, of the Rome Statute), would be afforded transit over the territory of a State party. Participants discussed the responsibilities of the State affording transit, the possibility of a competing request for extradition from a third State and the filing of a competing complaint against the person with the national judicial authorities of the State of transit.

14. Participants agreed that, in connection with cooperation, the experience of implementing the obligations resulting from United Nations Security Council resolutions 827 (1993) and 955 (1994) establishing the International Tribunals for the former Yugoslavia and for Rwanda might be useful, but that there were also differences to be borne in mind.

15. Participants noted the particular importance for the future work of the ICC of appropriate State support with regard to enforcement of sentences in accordance with Part 10 of the Rome Statute and were encouraged by the willingness of States to receive sentenced persons.

16. Participants acknowledged that the ICC was complementary to national criminal jurisdictions and that, taking into account the relevant rules of international humanitarian law, primary responsibility for prosecution of those crimes lay with States. To that effect, national legislation and practices should enable States to bring to justice the persons responsible for the crimes under articles 6 to 8 of the Statute. Participants noted that national law already existed in several States, while other States contemplated introducing legislation to that effect.

17. Participants reaffirmed the objective of the early establishment of the ICC and their commitment to the integrity of the Rome Statute, particularly in the context of the work in progress in the Preparatory Commission at the United Nations. In that connection, participants noted that it was very likely that the Rome Statute would enter into force in the near future. They also stressed the urgent need to negotiate the remaining instruments necessary for the functioning of the Court and expressed their willingness to support the practical measures required for the effective establishment of the Court.

18. In that context, participants recalled the important role that the 43 States members of the Council of Europe could play, considering that the number of ratifications and accessions worldwide had reached 38 and the number of

ratifications necessary for the entry into force of the Rome Statute was 60. Participants agreed to contribute towards the achievement of this goal and welcomed national initiatives to hold seminars on the ratification and implementation process, involving the media and parliamentarians, so that awareness and confidence in the future Court might be fostered among the public.

19. They appreciated the efforts of the Council of Europe in facilitating the exchange of information and views among its member States and observers, thereby providing assistance to its member States in the ratification and implementation process with a view to an early establishment of the ICC and its effective functioning.

20. Participants called upon the Council of Europe to continue to provide this opportunity for mutual consultations, in particular by maintaining its useful ICC web site, by providing support to the network of country liaison officers and by holding further consultations in an appropriate and regular form. For that purpose, appropriate provision should continue to be made in the programme of activities of the Council of Europe, in particular to enable the participation of all member States and observer States in such activities. Furthermore, coordination of the efforts of the Council of Europe with other organizations should also be ensured, in particular with the European Union, whose Council adopted an important Common Position in June of 2001.

21. Bearing in mind the Declaration of the Committee of Ministers of the Council of Europe of 10 December 1998, in particular, calling upon States to sign and ratify the Rome Statute and facilitate the rapid establishment of the International Criminal Court, participants invited the Committee of Ministers to lend further support to this end and decided to submit these conclusions to the Committee of Ministers asking it to forward them to CDPC and CAHDI so that they might take them into account in their work.

II. Declaration on the International Criminal Court, adopted by the Committee of Ministers of the Council of Europe at the 768th meeting of the Ministers' Deputies, 10 October 2001

The Committee of Ministers of the Council of Europe,

Bearing in mind in particular:

- The Declaration of the Committee of Ministers of the Council of Europe of 10 December 1998 on the occasion of the 50th anniversary of the Universal Declaration of Human Rights;

- Recommendation 1408 (1999) of the Parliamentary Assembly on the International Criminal Court and the corresponding reply by the Committee of Ministers;

- the report by the Venice Commission on constitutional issues raised by the ratification of the Rome Statute on the International Criminal Court dated 15 January 2001;

- the conclusions adopted at the first (CM/Inf(2002)32) and second consultation meetings (CM/Inf(2001)33), organised by the Council of Europe on 16-17 May 2000 and 13-14 September 2001, on the implications for Council of Europe member states of the ratification of the Rome Statute of the International Criminal Court;

- the Common Position of the Council of the European Union of 11 June 2001 on the International Criminal Court,

1. Convinced of the importance of putting an end to impunity for the perpetrators of the most serious crimes of concern to the international community as a whole and thus to contribute to the prevention of such crimes;

2. Convinced that the establishment of the International Criminal Court is a fundamental factor for reconciliation, justice, peace and security, and that it will contribute to the strengthening of the rule of law, the international protection of and respect for human rights and international humanitarian law;

3. Strongly attached to the standards of the European Convention on Human Rights and Fundamental Freedoms;

4. Recalling that the Rome Statute of the International Criminal Court is based on very high standards of justice and that the Court is complementary to national criminal jurisdictions;

5. Aware of the important role that the Council of Europe can play in facilitating the entry into force of the Rome Statute in view of its competences and of the number of its members, and of the complementarity of efforts between the Council of Europe and the European Union;

6. Welcoming the initiative of the Liechtenstein Chairmanship of the Committee of Ministers in convening the second consultation meeting and encouraging further activities which pursue the same aim;

7. Welcoming the contribution that the establishment of the International Criminal Court represents for the development of international criminal justice;

8. Welcoming the large number of signatures of the Rome Statute and the increasing number of ratifications,

I. CALLS ON all member, applicant and observer States who have not yet done so to become as soon as possible parties to the Rome Statute;

II. CALLS UPON all States to facilitate the early establishment of the International Criminal Court, to do everything possible to ensure efficient co-operation with the Court and to guarantee the independent, impartial and effective administration of justice;

III. ENCOURAGES all member, applicant and observer States to continue to support the work of the Preparatory Commission for the International Criminal Court and to co-operate fully with existing international criminal tribunals;

IV. CALLS ON all member, applicant and observer States to adapt without delay their internal law in accordance with the Rome Statute in order to enable them to co-operate fully with the future International Criminal Court and to make possible domestic investigations and prosecutions of persons suspected of having committed a crime provided in the Statute of the International Criminal Court,

V. EXPRESSES its readiness to provide States which so request, in the framework of existing legal co-operation programmes, with the appropriate assistance with a view to the ratification and implementation of the Rome Statute;

VI. STRESSES its readiness to consider further appropriate steps to ensure that, in the process of elaboration and implementation of Council of Europe instruments relevant to international co-operation in the criminal field, full account is taken of the principles and provisions of the Rome Statute of the International Criminal Court.